

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:SB:7:SAC:1:GL-121856-02
JLMcPherson

date:

to: Bob Golfe
Revenue Agent
North Highlands, CA

from: JEREMY L. MCPHERSON
Attorney (SBSE)

subject: **Summons Reimbursement Fees**

This memorandum responds to your request for assistance dated April 17, 2002. This memorandum should not be cited as precedent.

ISSUE

Whether a bank, which, under its contract with an independent storage facility, must pay that facility \$ [REDACTED] per hour for research of the bank records and \$ [REDACTED] per page for copies of those records, is entitled to reimbursement in excess of the rates prescribed in Treas. Reg. § 301.7610-1, when the bank is responding to an IRS summons.

CONCLUSION

No, the regulation provides the rates which will be paid for search, reproduction, and transportation costs which are necessary and "directly incurred," and the regulation provides that payments to an independent storage facility are considered "directly incurred" by the summoned third party; the Service will pay only the rates prescribed in the regulation.

FACTS

You issued a summons to a local bank for certain bank records of a taxpayer. The bank advised you that it pays a private storage facility to maintain the bank's records, and that, under the bank's contract with the storage facility, the bank agreed to pay the facility \$ [REDACTED] per hour for research and \$ [REDACTED] per page for each item copied. The bank wants the Internal Revenue Service to reimburse it for those costs. You estimate that, at those rates, it would cost the government between

\$ [REDACTED] and \$ [REDACTED] for your single summons, but that the cost would be about \$ [REDACTED] if the rates prescribed in Treas. Reg. § 301.7610-01 apply.

DISCUSSION

Treas. Reg. § 301.7610-1(a) provides that persons who are asked to give information to the Service generally will not be reimbursed for actual expenses, but instead will be paid at the rates prescribed in the regulation. Treas. Reg. § 301.7610-1(b) defines the following costs:

1. Directly incurred costs - includes payments to an independent storage facility.
2. Reproduction costs - \$8.50 per hour
3. Search costs - \$.20 per page
6. Transportation costs - actual cost, not including personnel time

Treas. Reg. § 301.7610-1(c) describes "conditions and rates of payments," divided into the following categories:

1. Basis for payment
2. Payment rates
 - (i) Search costs
 - (ii) Reproduction costs
 - (iii) Transportation costs

The regulation provides that "directly incurred costs" do not include any proportionate allocation of fixed costs. The regulation specifies that search fees, reproduction fees, and transportation fees charged by "an independent storage facility" are considered to be directly incurred by the summoned third party.

Under "basis for payment," the regulation states "[p]ayment will be made only for these costs [for search, reproduction, and transportation] that are both directly incurred and reasonably necessary." Treas. Reg. § 301.7610-1(c)(1). (Emphasis added.)

A reasonable interpretation of the regulation is as follows:

1. Payments will be made only for costs which are directly incurred and necessary.
2. Payments to independent storage facilities are "directly incurred" and "necessary."
3. Payments to independent storage facilities are considered to be directly incurred by the summoned 3rd party.
4. The regulation sets limits on the rate for search costs, reproduction costs, and transportation costs.
5. When the summoned party must pay search costs, reproduction costs, and transportation costs to the storage facility, those costs are considered to have been incurred by the summoned party.

6. The same limitations [for search costs, reproduction costs, and transportation costs] which apply to the summoned party also apply to charges by independent storage facilities which the summoned party pays.

In enacting I.R.C. § 7610, Congress authorized the Service to set rates under which payment may be made; to conclude that those rates can be avoided merely by putting the bank records in the hands of an independent storage facility would be contrary to congressional intent.

I recommend that you advise the bank that the Service will not pay more than authorized in Treas. Reg. § 301.7610-1 to compensate the bank for complying with the summons. If the bank refuses to comply on those terms, you should refer the matter to our office for a summons enforcement referral.

Please call me at (916) 974-5709 if you have questions.

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

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